

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

SEAN KURSHAT,

Plaintiff/Counter-Defendant,

Case No. 04-40281

vs.

HONORABLE PAUL V. GADOLA  
HONORABLE STEVEN D. PEPE

GENERAL BEARING CORPORATION,

Defendant/Counter-Plaintiff.

\_\_\_\_\_ /

**ORDER ALLOWING SUPPLEMENTAL BRIEFING REGARDING PLAINTIFF’S MOTION TO AMEND  
(DKT. # 38) AND REQUIRING PARTICULARS FROM PLAINTIFF**

In Plaintiff’s First Amended Complaint he alleges breach of contract and violation of the Michigan Sales Representatives Commission Act, MCL 600.2961, against his former employer, Defendant General Bearing Corporation, and seeks declaratory and monetary relief.

In response to Defendant’s Motion For Partial Summary Judgment Plaintiff argued that the allegations in his Complaint were broad enough to encompass a complaint for pre-termination commissions and that Defendant had been put on notice that these claims were at issue during the course of discovery. In a January 9, 2007, Report and Recommendation the undersigned found that Plaintiff had failed to met the notice pleading requirements of Fed. R. Civ. P. 8(a)(2) with respect to a claim for pre-termination commissions because “[t]here are no specific facts alleged in Count I or elsewhere in the First Amended Complaint that would suggest Plaintiff was complaining about sales commissions he received prior to his termination” (Dkt. #35). On March 30, 2007, Judge Paul V. Gadola accepted the undersigned’s interpretation of the Complaint (Dkt. #46).

Plaintiff now seeks leave to amend the First Amended Complaint to add the pre-termination commission claim.

Following a telephonic hearing on May 29, 2007, this matter is taken under advisement and  
IT IS ORDERED that:

A. Defendant may provide a supplemental brief on the issue of futility of the pre-termination claim on or before June 12, 2007. Plaintiff may respond on or before June 26, 2007.

B. Because the question of adding this pre-termination claim at this point in the litigation involves a question of prejudice, an inquiry into the nature and scope of additional discovery that will be required is necessary. The existing question on post-termination commissions in the First Amended Complaint involves fairly straightforward facts, many undisputed. The question of a pre-termination breach of the employment contract may involve far more complicated, and possibly a greater number of contested, facts as to whether Defendant breached its agreement that led to the calculation of Plaintiff's commissions at the Year 3, 60% level.

To facilitate this analysis of possible prejudice and the nature and scope of discovery likely needed if the amendment is allowed, Plaintiff shall provide a list of particulars regarding the alleged breach relating to pre-termination commissions. The Court and Defendant need to know the nature of specific things that are alleged to have been promised by Defendant and specific instances of violation of these promises including dates and actions or inactions of Defendant. Plaintiff shall provide this list of particulars on or before June 14, 2007. Defendant may file a five page supplemental reply on or before June 28, 2007.

Dated: May 31, 2007  
Ann Arbor, Michigan

s/Steven D. Pepe  
United States Magistrate Judge

Certificate of Service

I hereby certify that on May 31, 2007, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following: Kevin P. Albus, Randall J. Gillary, Robert C. Ludolph, James D. VandeWyngearde, and I hereby certify that I have mailed by United States Postal Service the paper to the following non-ECF participants: not applicable

s/ James P. Peltier  
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